

Assembly Bill No. 593

Passed the Assembly August 24, 2012

Chief Clerk of the Assembly

Passed the Senate August 21, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1473.5 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 593, Ma. Domestic violence: battering: recall and resentencing.

Existing law authorizes every person who is unlawfully imprisoned or restrained of his or her liberty to prosecute a writ of habeas corpus to inquire into the cause of that imprisonment or restraint.

Existing law also provides, until January 1, 2020, that a writ of habeas corpus may be prosecuted on the basis that expert testimony relating to intimate partner battering and its effects was not received in evidence at the trial court proceedings relating to a prisoner's incarceration for the commission of a violent felony committed prior to August 29, 1996, if there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction, that if the testimony had been admitted, the result of the proceedings would have been different.

This bill would make the provisions for a writ of habeas corpus based on intimate partner battering operative indefinitely. The bill would instead provide that a writ of habeas corpus based on intimate partner battering may also be prosecuted if competent and substantial expert testimony relating to intimate partner battering and its effects was not presented to the trier of fact at the trial court proceedings, and is of such substance that, had it been presented, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction or sentence, the result of the proceedings would have been different, and that the burden of proof in this regard is on the petitioner. The bill would specify that if a petitioner presented to the trier of fact expert testimony relating to intimate partner battering and its effects that was not competent or substantial, having presented that evidence would not be a bar to granting the petition.

The people of the State of California do enact as follows:

SECTION 1. Section 1473.5 of the Penal Code is amended to read:

1473.5. (a) A writ of habeas corpus also may be prosecuted on the basis that competent and substantial expert testimony relating to intimate partner battering and its effects, within the meaning of Section 1107 of the Evidence Code, was not presented to the trier of fact at the trial court proceedings and is of such substance that, had the competent and substantial expert testimony been presented, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction or sentence, that the result of the proceedings would have been different. Sections 1260 to 1262, inclusive, apply to the prosecution of a writ of habeas corpus pursuant to this section. As used in this section, “trial court proceedings” means those court proceedings that occur from the time the accusatory pleading is filed until and including judgment and sentence.

(b) This section is limited to violent felonies as specified in subdivision (c) of Section 667.5 that were committed before August 29, 1996, and that resulted in judgments of conviction or sentence after a plea or trial as to which expert testimony admissible pursuant to Section 1107 of the Evidence Code may be probative on the issue of culpability.

(c) A showing that expert testimony relating to intimate partner battering and its effects was presented to the trier of fact is not a bar to granting a petition under this section if that expert testimony was not competent or substantial. The burden of proof is on the petitioner to establish a sufficient showing that competent and substantial expert testimony, of a nature which would be competent using prevailing understanding of intimate partner battering and its effects, was not presented to the trier of fact, and had that evidence been presented, there is a reasonable probability that the result of the proceedings would have been different.

(d) If a petitioner for habeas corpus under this section has previously filed a petition for writ of habeas corpus, it is grounds for denial of the new petition if a court determined on the merits in the prior petition that the omission of expert testimony relating to battered women’s syndrome or intimate partner battering and

its effects at trial was not prejudicial and did not entitle the petitioner to the writ of habeas corpus.

(e) For purposes of this section, the changes that become effective on January 1, 2005, are not intended to expand the uses or applicability of expert testimony on battering and its effects that were in effect immediately prior to that date in criminal cases.

Approved _____, 2012

Governor